

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW ADAM LUCAS,

Defendant-Appellant.

UNPUBLISHED

January 24, 2003

No. 236891

Oakland Circuit Court

LC No. 00-173248-FH

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of three to five years in prison¹ imposed on his conviction of leaving the scene of a personal injury accident, MCL 257.617, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At trial the evidence showed that defendant's vehicle struck Stephen Croan after Croan stepped into the road. Defendant pulled to the side of the road, but left the scene without checking on the victim or summoning assistance. Croan died following the accident. Defendant turned himself into the police. He told the police that he thought his license was suspended. He admitted he thought he had killed the person, and as a result he panicked and fled the scene. Defendant was not charged with causing Croan's death.

The applicable statutory sentencing guidelines recommended a minimum-term range of zero to nine months. In imposing sentence, the court stated that based on defendant's driving record, his prior criminal record, and the circumstances of the offense, it concluded that a sentence of three to five years in prison was appropriate.²

¹ Defendant's brief incorrectly states that he was sentenced to forty to sixty months in prison. The judgment of sentence reflects that the trial court imposed a sentence of three to five years in prison, with credit for forty-nine days.

² The trial court informed defendant of his right to appeal, but did not specifically inform him he had the right to seek appellate review of the sentence on the ground it exceeded the recommended guidelines range, as required by MCL 769.34(7) and MCR 6.425(E)(4). Defendant did not seek to have the trial court place such a statement on the record at sentencing, (continued...)

In most instances a trial court must impose a sentence within the calculated guidelines range. MCL 769.34(2). A trial court may depart from the guidelines if it finds that a substantial and compelling reason exists to do so. MCL 769.34(3). To constitute a substantial and compelling reason for departing from the guidelines, the reason must be objective and verifiable, and must irresistibly hold the attention of the court. *People v Babcock*, 244 Mich App 64, 75; 624 NW2d 479 (2000) (*Babcock I*). We review the trial court's determination of the existence of a substantial and compelling reason for departure for clear error. *Id.* at 75-76. The determination that the reason is objective and verifiable is reviewed as a matter of law. *Id.* at 76. The determination that the reason constituted a substantial and compelling reason to depart from the guidelines is reviewed for an abuse of discretion. *Id.* The extent of a departure from the guidelines is reviewable pursuant to the principle of proportionality set out in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *People v Babcock (After Remand)*, 250 Mich App 463, 468-469; 648 NW2d 221 (2002) (*Babcock II*). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). The trial court may depart from the guidelines for nondiscriminatory reasons where legitimate factors either were not considered by the guidelines, or were considered but were given inadequate or disproportionate weight. MCL 769.34(3)(b); *People v Armstrong*, 247 Mich App 423, 425; 636 NW2d 785 (2001).

Defendant argues that he is entitled to resentencing before a different judge because the trial court lacked substantial and compelling reasons for departing upward from the guidelines and because the sentence imposed is disproportionate to his circumstances and those of the offense. We disagree and affirm defendant's sentence. The trial court departed upward from the recommended minimum term range of zero to nine months and imposed a minimum term of thirty-six months. The trial court's stated reasons for departing upward from the guidelines included defendant's numerous driving citations, his prior criminal record, and the circumstances of the offense, i.e., that defendant chose to leave the scene of the accident for his own selfish reasons in spite of the fact that he knew he had struck a person. Defendant's driving citations were objective and verifiable, and were not considered in the scoring of the guidelines.

The trial court relied on defendant's numerous infractions, which included two citations for speeding in excess of one hundred miles per hour and an accident which resulted in injury to another person, as support for its conclusion that the instant accident was not an isolated incident of irresponsible and dangerous driving. Defendant's four prior misdemeanor convictions were considered in the scoring of the guidelines. MCL 777.55. However, the trial court's emphasis on the alcohol-related nature of the convictions, an objective and verifiable factor that was not accounted for in the scoring of the guidelines, indicated both that the court viewed the

(...continued)

and did not move for resentencing in the trial court. Defendant has appealed his sentence on the ground that it exceeded the guidelines. We find that defendant was not prejudiced by the trial court's error, and conclude the error was harmless under the circumstances. Resentencing is not warranted on this ground. MCL 769.26; *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

A remand for completion of a guidelines departure form is unnecessary. A form completed by the trial court is attached to plaintiff's brief on appeal.

convictions as further evidence of defendant's propensity for irresponsible behavior, and that the court concluded the convictions were given inadequate weight in the scoring of the guidelines. MCL 769.34(3)(b).

Finally, the trial court did not err in finding that the seriousness of defendant's admitted behavior in leaving the scene of the accident was given inadequate weight by the guidelines. *Armstrong, supra*. The trial court did not abuse its discretion by finding that substantial and compelling reasons existed for departing upward from the guidelines, *Babcock I, supra*, and adequately articulated its reasons for departing from the guidelines. Defendant's sentence, while a significant departure from the guidelines, adequately reflects the seriousness of the matter, and thus is proportionate. *Houston, supra; Babcock II, supra*. Resentencing is not required.

We affirm.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Michael J. Talbot